

Before the
Administrative Hearing Commission
State of Missouri



JEFF LAMBERT,

Petitioner,

vs.

MISSOURI ETHICS COMMISSION,

Respondent.

No. 14-0770 EC

DECISION

Jeff Lambert was required to pay the late filing fee of \$80.00 to the Missouri Ethics Commission (the “MEC”).

Procedure

On May 19, 2014, Lambert filed a complaint appealing a late filing fee assessed by the MEC. The MEC filed its answer on June 9, 2014 and filed its motion for summary decision, memorandum in support, and exhibits on July 16, 2014. We gave Lambert until August 5, 2014 to respond to the MEC’s motion, but he failed to respond.

Pursuant to 1 CSR 15-3.446(6),¹ we may decide this case without a hearing if the MEC establishes facts that Lambert does not genuinely dispute and entitle the MEC to a favorable decision. Facts may be established by admissible evidence such as a stipulation, pleading of the adverse party, discovery response of the adverse party, affidavit, or any other evidence

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

admissible under law.² The MEC's motion is accompanied by documentary evidence, including authenticated business records of the MEC. Therefore, we make our findings of fact based on this admissible evidence, along with Lambert's pleadings.

Findings of Fact

1. At all times relevant to these findings, Lambert was an elected member of the board of the Livingston County R-III School District ("District").

2. The District is a political subdivision of the State of Missouri.

3. At all relevant times, the District had an annual operating budget exceeding one million dollars.

4. The District has not provided to the MEC a certified copy of an ordinance, order, or resolution passed pursuant to § 105.485.4³ making public its own method of disclosing potential conflicts of interest and substantial interests of its officers and employees.

5. May 1, 2014 was not a Saturday, Sunday, or official state holiday.

6. On May 9, 2014, Lambert signed, verified and filed a personal financial disclosure statement ("PFD") electronically with the MEC.

7. On May 13, 2014, the MEC sent Lambert a late filing fee assessment notice of \$80.00.

8. On July 10, 2014, the MEC received Lambert's \$80.00 check for the late filing fee.

Conclusions of Law

We have jurisdiction of this matter.⁴ Our duty is to decide the issues that were before the MEC.⁵ We must follow the same law that the MEC must follow.⁶ The MEC has the burden of

² 1 CSR 15-3.446(6)(B).

³ RSMo Supp. 2013. Statutory references are to RSMo. 2000 unless otherwise noted.

⁴ Section 105.963.4, RSMo. Supp. 2013.

⁵ *Mo. Ethics Comm'n v. Wilson*, 957 S.W.2d 794, 798 (Mo.App. S.D. 1997).

⁶ *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

proof.⁷ The MEC contends Lambert is subject to late filing fees of \$80.00 for failing to timely file a PFD as required by § 105.483, which provides:

Each of the following persons shall be required to file a financial interest statement:

* * *

(11) Each elected official, candidate for elective office, the chief administrative officer, the chief purchasing officer and the general counsel, if employed full time, of each political subdivision with an annual operating budget in excess of one million dollars, and each official or employee of a political subdivision who is authorized by the governing body of the political subdivision to promulgate rules and regulations with the force of law or to vote on the adoption of rules and regulations with the force of law; unless the political subdivision adopts an ordinance, order or resolution pursuant to subsection 4 of section 105.485[.]

Section 105.487 provides when Lambert was required to file:

The financial interest statements shall be filed at the following times, but no person is required to file more than one financial interest statement in any calendar year:

* * *

(3) Every other person required by sections 105.483 to 105.492 to file a financial interest statement shall file the statement annually not later than the first day of May and the statement shall cover the calendar year ending the immediately preceding December thirty-first[.]

(4) The deadline for filing any statement required by sections 105.483 to 105.492 shall be 5:00 p.m. of the last day designated for filing the statement. When the last day of filing falls on a Saturday or Sunday or on an official state holiday, the deadline for filing is extended to 5:00 p.m. on the next day which is not a Saturday or Sunday or official holiday. Any statement required within a specified time shall be deemed to be timely filed if it is postmarked not later than midnight of the day previous to the last day designated for filing the statement.

⁷ See, *Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo.App. St.L.D. 1974).

Lambert was the elected official of a political subdivision with an operating budget over \$1 million. Therefore, he was required to file a PFD in 2014. The deadline for that PFD was May 1, 2014. He filed his PFD on May 9, 2014, eight days late.

Lambert does not dispute that he was required to file his statement with the MEC according § 105.483. Instead, he asserts he did not fully understand his ongoing obligation to file a PFD until he received the late filing notice from the MEC.

The MEC is required to assess late filing fees pursuant to § 105.963.3, which provides:

The executive director [of the MEC] shall assess every person required to file a financial interest statement pursuant to sections 105.483 to 105.492 failing to file such a financial interest statement with the commission a late filing fee of ten dollars for each day after such statement is due to the [MEC.]

In his appeal, Lambert discloses some personal challenges that no doubt diverted his attention from more administrative concerns like meeting the PFD filing deadline. However, § 105.963.3 uses the word “shall.” The word “shall” means that the late filing fee is mandatory.⁸

Because this Commission was created by state statutes, we have only such authority as the statutes give us.⁹ We do not have authority to add to or subtract from the terms of the statutes or to make an exception.¹⁰ Section 105.963.3 does not give the MEC or this Commission discretion to waive the late filing fee if a financial interest statement is not timely filed. Therefore, we assess Lambert a late filing fee of \$10.00 for each day his PFD was late, or a total of \$80.00.

⁸ *State ex rel. Scott v. Kirkpatrick*, 484 S.W.2d 161, 164 (Mo. banc 1972).

⁹ *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App. K.C.D. 1974).

¹⁰ *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).

Summary

We grant the MEC's motion for summary decision. Lambert was required to pay the late filing fee of \$80.00. We cancel the hearing.

SO ORDERED on August 19, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner